

**MILLSTONE TOWNSHIP  
BOARD OF ADJUSTMENT  
MEETING MINUTES  
SEPTEMBER 23, 2009**

Meeting called to Order by Chairman Novellino at 7:35 p.m.

Mr. Barthelmes read the adequate notice.

Salute to the Flag.

Roll Call: Present: Curcio, Novellino, Bailey, Frost, Barthelmes, Devine and Morelli.

Late: Lambros (arriving at 7:40 p.m.). Absent: Conoscenti

**MINUTES:** Mr. Curcio made a Motion to approve the August 26, 2009 Meeting Minutes and Mr. Frost offered a Second. Roll Call Vote: Curcio, Frost, Bailey and Novellino voted yes.

**NEW APPLICATIONS:**

**Z07-06 353 SWEETMANS LANE, LLC** – Block 39.01, Lots 2.01 & 7. 1.88 acres located in the NC Zone at 353 Sweetmans Lane. Applicant seeks preliminary site plan approval to construct a one-story, 4,000 s.f. retail building with an existing 6,750 s.f. multi-use building. “D” variance is required for Block 39.01, Lot 7 (for proposed stormwater management) which is located in the

**Z07-07 232 MILLSTONE ROAD, LLC** – Block 39.01, Lots 2.02 & 7– 4.33 Acres located in the NC Zone located on Sweetmans Lane. Applicant seeks preliminary site plan approval to construct a 7,700 s.f. retail building, 1,000 s.f. office space on the second-floor with adjoining 4,000 s.f. bank. “D” variance needed for Lot 7 (proposed stormwater management area) which is located in the RU-P Zone. “D” variance needed for Tower peak and cupola peak. Deemed Complete 6-16-09. Date of Action: 10-14-09.

Attorney Vella made an announcement that both applications would not be heard this evening due to improper noticing regarding Lot 7. The applicant will re-notice properly for the October 28, 2009 meeting beginning at 7:30 p.m. in this building. The plans are available for review in the Municipal Building during normal business hours, Monday through Friday.

Mr. Lambros arrived at 7:40 p.m.

**RESOLUTIONS:**

**Z09-03 PARAMOUNT MARINAS** – Block 54, Lot 1. 14.4 acres located in the RU-P Zone Located near Yellow Meeting House Road. The applicant seeks to construct a single-family dwelling house on the premises. Bulk Variance needed. Deemed Complete: 4-23-09. Date of Action: 8-21-09. Jurisdiction accepted on 5-27-09. Carried to 6-24-09; 7-29-09; 8-26-09 without

any further notice. Extension of time granted to 8-31-09. Application withdrawn without prejudice.

Mr. Curcio made a Motion to memorialize the Resolution and Mr. Bailey offered a Second. Roll Call Vote: Curcio, Bailey, Lambros, Frost and Novellino voted yes to memorialize the Resolution.

**Z09-04 SEASONAL WORLD** – Block 57.01, Lot 21.01. 2.91 Acres located in the HC-1 Zone know as 532 Monmouth Road. Applicant seeks use variance relief to allow the display of three above-ground pools. Use variance and amended major site plan approval sought. Application deemed complete 8-11-09. Board granted use variance, amended major site plan and relief from zoning board condition.

Chairman Novellino explained that it is best that the Board addresses and clarifies items in the Resolution so that the applicant and code enforcement have a clear understanding as to what is and is not allowed.

Attorney Christopher Stevenson, representing the applicant, wanted to offer comments before the Board memorializes the draft resolution. He questioned condition no. 10 regarding prohibiting the outdoor displays of merchandise for sale. Mr. Stevenson advised that in reviewing the original site plan of 2001, there was no prohibition of display merchandise. Condition No. 7 of the June 2002 Resolution contemplated display merchandise. He advised that in reviewing the Ordinance for the HC-1 Zone, he found no prohibition of outdoor merchandise display (5-12.5).

Chairman Novellino, referring to the beginning of Articles 4 and 5 of the Township Ordinances, advised that per the ordinances if a use is not specifically allowed in the ordinance then it is deemed prohibited. Holiday decorations were discussed. The outdoor displays are visible from the roadway as opposed to indoor displays which cannot be seen unless the public enters the store. Some outdoor displays might be fine, but some might be unsightly to the public.

Attorney Greg Vella advised that in the June 2002 Zoning Board Resolution, the only outdoor display granted was a gazebo.

Attorney Vella swore in applicant Anthony Schiavone. Mr. Schiavone offered a brief history of the application before the board in 2001. In 2002, he came back for the putting green, storage shed, etc. He advised that he bought a site in Jackson for purposes of storing his supplies.

Attorney Vella stated that the Board should not need to micro manage the applicant's displays. The hearing on the current application is concluded. If the applicant wants to have outdoor displays, an area on the site plan must reflect where they would be located. The Board must then be able to see the site plan before approving it. For

holiday displays such as Halloween, Christmas, etc. the applicant can designate a certain area on the site plan where these objects are displayed for the public to look through for potential purchase. Mr. Vella advised that if the applicant wants to put up outdoor displays, he must either get permission from the town or come back to the Board for approval.

There was brief discussion as to the difference between an outdoor display and a holiday decoration. If items for sale are creating any public traffic in the display area they are an outdoor display and subject to site plan review.

Chairman Novellino stated that if the applicant wants an outdoor display of items he wants to sell, he should first go to zoning officer. If the zoning officer states that it is an additional expansion of your business, then you must submit an amended site plan for the Board to approve, deny or amend. The steps of approval were defined.

Concerning Resolution condition no. 10 and the issue of outdoor display or decoration.

There was discussion on the intent of the condition either to prohibit decorations or prohibit items displayed for public sale. The applicant's concern is that he should be able to put his merchandise outside for display for holiday sales.

Attorney Vella clarified that if only a permit is needed for display of an item, the applicant can apply to the township for a permit. If the town permits it, the applicant is able to display the item. If the township determines that the applicant needs site plan approval, then he must come back for site plan approval.

Mr. Stevenson asked for clarification for outdoor display being prohibited in the HC-1 zone. Chairman Novellino stated that the board's position is that if it is not expressly permitted, then it is not permitted. Attorney Vella advised that whether a display is a decoration is not the Board's decision to make, it is for the zoning officer to determine. That determination could come to this Board on appeal.

The applicant would like to note and he has looked at displays throughout the Township. The applicant indicated that not getting an answer back from zoning on whether something is permitted or not is causing him problems.

Chairman Novellino advised that the Board is attempting to clarify what he is permitted to do and what he is not permitted to do. If the Board approves of the activity, then no one from the town can bother him.

Attorney Vella advised the Board would carry the memorialization of the Resolution to the next regularly scheduled meeting which is October 28, 2009. The applicant can file an amended application and put on his plans specifically whatever activity he wishes to conduct, location of the area for displays, etc. This amended application and/or site

plan must be filed with the Board secretary ASAP. Time is of essence due to the Halloween season will be over soon.

Mr. Stevenson discussed the issue regarding trailers and indicated that the trailers are temporarily on the property for the season changeover period. Attorney Vella stated that this may be completely appropriate, but that the location of the temporary trailers should be depicted on the site plan and approved by the board.

Concerning Resolution Condition no. 11, Attorney Vella stated that no temporary signs are to be put up, only what is allowed by permit or ordinance.

Chairman Novellino polled the Board as to whether they want to permit the display of holiday decorations tonight or want to see a comprehensive site plan. The Board wanted to see a comprehensive site plan containing the location of the trailers and any requested outdoor displays at the next hearing on October 28, 2009.

Mr. Frost explained that the Board members try very hard to meet the applicant's requests because they understand that he is trying to make a living. He further stated that an applicant must be mindful that the Board has a responsibility to uphold the towns' rules and regulations.

The applicant granted an extension of time through October 31, 2009 to memorialize the Resolution.

#### **OLD BUSINESS:**

The Board discussed the letter that they have agreed upon that will be forwarded to the Township Committee addressing their concerns over enforcement of their Resolutions.

Seeing no further business, the Board adjourned the meeting at 9:15 p.m. by Motion of Mr. Curcio and a Second offered by Mr. Barthelmes and by unanimous vote.

Respectfully submitted,

Pamela D'Andrea